BORA LASKIN LAW LIBRARY
3 1761 09564679 0

UNIVERSITY OF TORONTO
FACULTY OF LAW

Materials for

CITIZENSHIP, IMMIGRATION AND GLOBALIZATION

LAW262H1S; GLAO211H; Spring 2014
Perspective/ICT/SUYRP course

SPRING 2014

VOLUME II

Professor Ayelet Shachar
Faculty of Law
University of Toronto

K
3224
.A58S43
2014
v.2
c.1

erials reproduced herein are solely for the educational use of students at the
versity of Toronto Faculty of Law, and are not for commercial sale or use

Materials for

CITIZENSHIP, IMMIGRATION AND GLOBALIZATION

LAW262H1S; GLAO211H; Spring 2014

Perspective/ICT/SUYRP course

SPRING 2014

VOLUME II

Professor Ayelet Shachar
Faculty of Law
University of Toronto

The materials reproduced herein are solely for the educational use of students at the University of Toronto Faculty of Law, and are not for commercial sale or use

Digitized by the Internet Archive
in 2019 with funding from
University of Toronto

https://archive.org/details/materialsforciti02shac_2

UNIVERSITY OF TORONTO FACULTY OF LAW

UNIVERSITY OF TORONTO

MUNK SCHOOL OF GLOBAL AFFAIRS

CITIZENSHIP, IMMIGRATION AND GLOBALIZATION

LAW262H1S; GLAO211H; Spring 2014
Perspective/ICT/SUYRP course

PROFESSOR AYELET SHACHAR

Class Meeting Time: Monday 2:10-4:00
Office Hours (FL 408): Monday 4:00-4:30 or by appointment
Phone: 416-978-1620; E-mail: ayelet.shachar@utoronto.ca
Faculty Assistant Nancy Bueler: nancy.bueler@utoronto.ca

Citizenship and immigration have become a hot-button political issue in recent years in Canada, as well as in many other destination countries. Debates range from admission questions – who should be allowed to enter, according to what criteria, and for how long – to queries about the civil rights of migrants, cultural diversity, and the level of integration that can legitimately be expected from newcomers once they have settled in the country. Another emerging topic is the growing impact of economic remittances, transnational investments, and political contributions by dual citizens in both sending and receiving countries. This course will explore these new developments, placing them in the broader context of Canadian immigration law, history, and policy. We will also refer to comparative evidence from the United States, Australia, France, Germany, Ireland, Italy, the United Kingdom, and Singapore, as well as examine the changing conceptions of membership in leading emigrant-sending countries, including Mexico, India, and China. With this global perspective in mind, we will chart the new terrain for Canadian citizenship and immigration law for the twenty-first century.

EVALUATION

- Class participation (15%): Class meetings will be organized around a discussion of each week's readings. Class participation includes attendance, substantive participation in weekly discussions, and one in-class presentation of a comment paper (see below).
- 1,250 words (five-page) comment paper (15%): The comment paper will be a critical assessment of one or more of the sources on the reading list. Comment papers are due at 4 p.m. on the day before the class readings are scheduled to be discussed. Please e-mail the comment paper to ayelet.shachar@utoronto.ca. Each student is expected to use the five-page comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. The submission of the comment paper will be accompanied by a short in-class presentation of the paper. Students must sign up for the oral presentation of one of their comment papers ahead of time, during the second meeting of the seminar.
- Final research paper of 6,000-6,500 words (approx. 20 to 25 pages) (70%): The final paper's topic must be pre-approved by the instructor. A one-page outline of your paper and a preliminary bibliography must be turned in by 2:00 p.m., Monday, February 24, 2014. The final paper is due by 10 a.m. on the last day of the reading period, April 24, 2014 (Records Office).

READING MATERIALS

- The reading materials will draw upon Canadian and comparative jurisprudence and legislation governing citizenship and immigration law, as well as contemporary political theory, globalization studies, and social science literature. The reading material is assembled in a course packet, *Citizenship, Immigration and Globalization*, edited by Professor Shachar (Faculty of Law, University of Toronto, 2014). The course packet is available for purchase at the Law School's bookstore. Additional copies will be placed on short-term reserve at the Bora Laskin Law Library. Course materials will also be posted on Blackboard.

VOLUME ONE

I. FOUNDATIONS

1. The Classic Model of Sovereignty and the Challenges of Migration in the 21st Century

"Citizenship," in *Immigration and Citizenship: Process and Policy*, ed. Thomas Alexander Aleinikoff et al. (5th ed., West, 2003), p. 1 1

"Methodological Preliminaries" in Lea Ypi, "Justice in Migration: A Closed Borders Utopia?" 16 *Journal of Political Philosophy* (2008), pp. 392-393 2

"Migration at a glance," in *Report of the Global Commission on International Migration* (GCIM, 2005); available at www.gcim.org/en/finalreport 4

2. Membership's Boundaries and the Shifting Borders of Immigration

Rogers Brubaker, "Citizenship as Social Closure," in *Citizenship and Nationhood in France and Germany* (Harvard University Press, 1992), pp. 21-34..... 7

"Who are the *Harraga*?" in Branko Milanovic, *The Have and the Have-Notes* (Basic Books, 2011), pp. 130-134 21

Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (Columbia University Press, 1996), pp. 1-6; 59-75 24

Ayelet Shachar, "The Shifting Border of Immigration Regulation," 3 *Stanford Journal of Civil Rights and Civil Liberties* (2007), pp. 165-193 48

Bruce Ackerman, *Social Justice in the Liberal State* (Yale University Press, 1980), pp. 93-95 78

Gary S. Becker, "An Open Door for Immigrants—The Auction" *Wall Street Journal*, October 14, 1992, A14 81

II. Who Belongs? Citizenship and Immigration Law in a Nutshell

3. *Who "Naturally" Belongs to the Political Community – and on What Basis?*

Ayelet Shachar, "Citizenship" in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and Adras Sajo (Oxford University Press, 2012), pp. 1002-1019 83

Fourteenth Amendment, U.S. Constitution 103

Warsame v. Canada, Communication No. 1959/2010, CCPR/C/102/D/1959/2010 (2010) 104

Re Ortiz-Martinez, Board of Immigration Appeals, File No. A-27-645-795, May 25, 2007 116

Twenty-Seventh Amendment of the Constitution Act 2004 [Ireland] 121

4. *Family-Sponsored Immigration Categories – Who is Family?*

"Family Class - Canada" in Emily Carasco et. al., *Immigration and Refugee Law: Cases, Materials, and Commentary* (Emond Montgomery, 2007), pp. 369-382 123

Government Notices, Department of Citizenship and Immigration, *Immigration and Refugee Protection Act* ("Conditional Permanent Residence") Vol. 145, No. 13, March 26, 2011 131

Tobi Cohen, "Critics raise concerns about new marriage fraud measures," o.canada.com, October 26, 2012 134

Carol Sanders, "New super visa super disappointing," *Winnipeg Free Press*, Dec. 21, 2011 136

Denise Hansen, "Popular Super Visa gets mixed reviews from applicants," March 7, 2013, canadianimmigrant.ca 139

Richard Fausset, "Binational Gay Couples in Immigration Bind" *Los Angeles Times*, July 10, 2006 143

US Immigration and Customs Enforcement, "Applicability of Prosecutorial Discretion Memoranda to Certain Family Relations," Oct. 5, 2012 146

National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs, C.C.T. 10/99 [South Africa] 148

C 130/02 *Zambrano*, Official Journal of the European Union, 30.4.2011 151

Anja Wiesbrock, "The *Zambrano* Case: Relying on Union citizenship rights in 'internal situations,'" *EUDO Citizenship Observatory* (EUI, March 2011) 152

5. *Employment-Based Immigration: Point System for the Highly Skilled*

Citizenship and Immigration Canada, *News Release: An Immigration System that Works for Canada*, Dec. 19, 2012 155

Ayelet Shachar, "The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes" 81 *NYU Law Review* 148 (2006) 157

Melissa Fama, "A New Era for Canada's International Student Program," *Canadian Diversity*, Winter 2011 210

Canadian Council for Refugees, "Canadian immigration: changing priorities" (April 2011) 214

Demetrios G. Papademtriou and Madeleine Sumption, *Rethinking Points Systems and Employer-Selected Immigration*, Migration Policy Institute, June 2011 218

Naomi Alboim and Karen Cohl for Maytree, *Shaping the Future: Canada's Rapidly Changing Immigration Policies*, Oct. 2012, pp. 44-45, 54-57 229

"Letter to The Times: Nobel prize-winners in science have been enriching and enhancing British science and society for decades," October 7, 2010 234

Yudhijit Bhattacharjee, "US Immigration: Groups Urge Easing of Restrictions on Visa Policies Affecting Scientists," 304 *Science* 943 (2004) 235

Statement and Recommendations on Visa Problems Harming America's Scientific, Economic, and Security Interests, written by leaders of the academic community 236

Brenda S. A. Yeoh, "Bifurcated Labour: The Unequal Incorporation of Transmigrants in Singapore" 97 *Tijdschrift voor Economische en Sociale Geografie* (2006), 26-37 241

VOLUME TWO

6. Temporary Low-Skilled Migration Programs; Domestic Workers; Undocumented Migrants; Earned Citizenship

Citizenship and Immigration Canada, *News Release: Canada Welcomes Highest Number of legal immigrants in 50 years while taking action to maintain the integrity of the immigration system,* February 13, 2011 1

Martin Ruhs and Philip Martin, "Numbers vs. Rights: Trade-Offs and Guest Worker Programs," 42 *International Migration Review* 249 (2008) 3

Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books, 1983) pp. 52-61 20

Valeria Otonelli and Tiziana Torresi, "Inclusivist Egalitarian Liberalism and Temporary Migration: A Dilemma," 20 *Journal of Political Philosophy 202* (2012) 28

Cindy Hahamovitch, "The Lessons of Belle Glade," *New York Times,* July 18, 2013 41

Jennifer Gordon, "Transnational Labor Citizenship," 80 *Southern California Law Review* 502 (2007), pp. 503-510 43

ILO, "Convention Concerning Decent Work for Domestic Workers" 15A, *International Labour Organization,* 2011 51

"My Life as an Illegal," *Texas Monthly,* July 2006 61

Ayelet Shachar, "Earned Citizenship: Property Lessons for Immigration Reform," 23 *Yale Journal of Law & the Humanities* 110 (2011), pp. 110-158 68

U.S. Citizenship and Immigration Services, *I Am a Young Person Who Arrived in The United States as a Child (Childhood Arrival),* Nov. 15, 2012 117

7. Asylum Seekers, Forced Migration & Movie Screening "Well-Founded Fear"

UNHCR, "Asylum and Refugee Status Determination" in *UNHCR Statistical Yearbook 2010,* pp. 40-45 119

Citizenship and Immigration Canada, *Making Canada's Asylum System Faster and Fairer: New Asylum System Comes into Force Dec. 15, 2012,* Nov. 30, 2012 125

Peter Showler, "New Refugee Bill Will Not Give Refugees a Fair Chance to Tell Their Stories," *Refugee Forum,* University of Ottawa 127

Professor Shachar will offer introductory comments before the screening of the documentary, which will be shown in class during our regular meeting time.

III. THE NEW FRONTIERS OF CITIZENSHIP AND IMMIGRATION

8. Shared Values; State and Religion; Return of Assimilation?

"France/Secularism," *Statement made by Jacques Chirac,* President of the Republic, Paris, January 28, 2004 128

Rogers Brubaker, "The Return of Assimilation? Changing perspectives on immigration and its sequels in France, Germany, and the United States," 24 *Ethnic and Racial Studies* 531 (2001) 129

John R Bowen, "How the French State Justifies Controlling Muslim Bodies: From Harm-Based to Values-Based Reasoning," 78 *Social Research* 325 (2011) 147

Bill 60, *Charter affirming the values of State secularism and religious neutrality and of equality between women and men and providing a framework for accommodation requests,* 1st Sess, 40th Leg., Québec, National Assembly, 2013 171

Marian Scott, "Most immigrants to Quebec feel attachment to Canada: Poll," *The Gazette,* May 6, 2013 178

Ayelet Shachar, "Interpretation Sections (27 and 28) of the Canadian Charter," in *Canadian Charter of Rights and Freedoms,* eds., Errol Mendes and Stephane Beaulac (5th ed., LexisNexis, Canada, 2013), pp. 165-178 181

R v. N.S., 2012 SCC 72 189

Alberta v. Hutterian Brethren of Wilson Colony [2009] 2 S.C.R. 567 190

Ayelet Shachar, "Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies," 50 *McGill Law Journal* 49 (2005) 202

9. Citizenship Tests in Public Law and the Rise of Privatized Diversity

Amitai Etzioni, "Citizenship Tests: A Comparative, Communitarian Perspective," 78 *Political Quarterly* 353 (2007) 214

Liav Orgad, "Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe," 58 *American Journal of Comparative Law* (2010), pp. 53-83 225

Randall Hansen, "Citizenship tests: an unapologetic defence," How Liberal Are Citizenship Tests? *EUDO Citizenship Forum* (EUI, 2010) 256

Citizenship and Immigration Canada, *Discover Canada: The Rights and Responsibilities of Citizenship* (2010), http://www.cic.gc.ca/english/pdf/pub/discover.pdf 259

"Canadian history a strong point with newcomers," *CBC News*, December 27, 2011 264

The Canadian Society of Muslims News Bulletin, *Darul-Qada: Beginnings of Muslim Civil Justice System in Canada* (2003) 265

Arbitration Act, 1991, S.O. 1991, ch. 17, ss. 6, 17-20 268

Canadian Council of Muslim Women, *Position Statement on the Proposed Implementation of Sections of Muslim Law [Sharia] in Canada* (2004) 271

Ministry of the Attorney General, *Backgrounder: The Family Statute Law Amendment Act* (2005) 276

Family Arbitration, Ontario Regulation 134/07 (2007) 278

David Pearl and Werner Menski, "Informal Muslim dispute settlement processes," in *Muslim Family Law* (Sweet and Maxwell, 1998), pp. 77-80 282

VOLUME THREE

10. Naturalization, Dual Citizenship, and Transnationalism: Membership Beyond the Territory

Ruud Koopmans et. al., *Contested Citizenship: Immigration and Cultural Diversity in Europe* (University of Minnesota Press, 2005), pp. 7-15 1

Christian Joppke, "Citizenship between De- and Re-Ethnicization" 44 *European Journal of Sociology* 429 (2003) 6

Sam Dillon, "Mexico Woos U.S. Mexicans, Proposing Dual Nationality," *New York Times*, December 10, 1995, A16 16

Peter J. Spiro, "Dual Nationality: Unobjectionable and Unstoppable" *Center for Immigration Studies* (2000) 18

Claudio López-Guerra, "Should Expatriates Vote?" 13 *Journal of Political Philosophy* 216 (2005) 26

Kim Barry, "Home and Away: The Construction of Citizenship in an Emigration Context," 81 *NYU Law Review* (2006), pp. 11-59 45

Italy's "Overseas Constituency," Provisions governing the right to vote of Italian citizens abroad, Law No. 459, Dec. 27, 2001, Gazz. Uff. No. 4, Jan. 5, 2002 [Italy] 95

11. Regional or Supranational Citizenship; Where Europe and North America Diverge?

Article 20, "Citizenship of the Union," Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), Official Journal of the European Union, C115/56, 9.5.2008 97

Christian Joppke, "The Inevitable Lightening of Citizenship," 51 *Archives Europeennes de Sociologies* 9 (2010) 100

Ronen Shamir, "Without Borders? Notes on Globalization as a Mobility Regime," 23 *Sociological Theory* 199 (2005) 124

Hirshi v. Italy, "Boat Migrants" European Court of Human Rights Grand Chamber Judgment (Application no. 27765/09) 145

Sarah Stillman, Lampedusa's Migrant Tragedy, and Ours," *The New Yorker*, Oct. 10, 2013 148

Peter Andreas, "A Tale of Two Borders: The U.S.-Mexiso and U.S.-Canada Lines after 9-11," *Center for Comparative Immigration Studies*, May 2003 152

Government of Canada, "A Declaration by the Prime Minister of Canada and the President of the United States of America" & "Key Areas of Cooperation" in *Beyond the Border: A shared vision for perimeter security and economic competitiveness* (http://www.borderactionplan-plandactionfrontalier.gc.ca/psec-scep/declaration-declaration.aspx?lang=eng) 167

Emily Gilbert, "The North American Security Perimeter should be an election issue," *rabble.ca*, April 6, 2011 172

12. The Future of Citizenship in a Globalizing World: Strangers No More?

Alison Brysk and Gershon Shafir, "Conclusion: Globalizing Citizenship?" in *People Out of Place: Globalization, Human Rights, and the Citizenship Gap* (Routledge, 2004), pp. 209-215 175

Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009), pp. 1-18 184